IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5991 of 1998

with

SPECIAL CIVIL APPLICATIONS No 7741,

9850, 7793 and 8597 all of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PATEL VALLABHKUMAR GIRDHARBHAI

Versus

AHMEDABAD MUNICIPAL CORPORATION

Appearance:

1. Special Civil Application No. 5991 of 1998
   MR AM RAVAL for Petitioner No. 1-24
   MR NIGAM R SHUKLA for Respondent No. 1
   RULE SERVED for Respondent No. 2
2. LETTERS PATENT APPEAL No. 1292 of 1998
   MR AM RAVAL for Petitioner No. 1
   MR BHARAT T RAO for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 14/07/2004

ORAL JUDGEMENT

1.0 The petitioners herein have challenged the order dated 23/07/98 passed by the respondent Corporation, at Annexure 'H' to the petition, whereby, the services of the petitioners came to be terminated. They have also prayed for directing the respondent Corporation to regularize their services as Sanitary Sub-Inspectors on regular and permanent available vacancies.

2.0 The brief facts of the case are as follows;

2.1 The petitioners were working in the respondent Corporation as Sanitary Sub-Inspectors since 1996. Other similarly selected candidates were also appointed as Sanitary Sub-Inspectors on ad-hoc basis in 1992 and 1994. It is the case of the petitioners that all of them were appointed as stop-gap arrangement and though there was a backlog of about 100 posts, the respondent Corporation did not regularized the said posts. The selection of the petitioner was the subject matter of challenge before the City Civil Court, Ahmedabad by way of Civil Suit No.2546/1991 and 2436/1992 which came to be dismissed on 31/08/2000. Therefore, the selection of the petitioner has now achieved finality.

2.2 It is also the case of the petitioners that some of them were even promoted to the post of Sanitary Inspectors. The petitioners were also given pay-slips in which their actual retirement date was also mentioned. Therefore, it cannot be said that their appointment was on ad-hoc basis except on an occasion when they were given one day artificial break. On 23/07/98, the respondent Corporation terminated the services of the petitioners. Hence, this petition.

3.1 Earlier this Court while issuing Notice had protected the services of the petitioners by granting ad-interim relief and the same has continued till date. Paras 5, 6, 7 & 8 of the affidavit filed by the Legal Officer of the respondent Corporation dated 09/07/04 reads as under;

"Para 5 : I say and submit that as on date, 120 vacancies are there as against which 93 stop-gap Sanitary Sub-Inspectors are continued and one Sanitary

Sub-Inspector has expired. It is pertinent to note that the select list which was finalized in 2000, was on the basis of available vacancies as on that day, roster points as were required as on that date.

Para 6 : I say that on the basis of the said select list which is finalized, the Corporation undertaken exercise to see that as the petitioners were selected after due process of law, their services may be regularized as per seniority list as well as roster point and the same has been examined by the Corporation in detail. It was also decided that while operating the list in such a manner, the persons who are at present working as on Stop-gap arrangement, should be continued on stop-gap arrangement and their services would be regularized as and when the seats become available. Till then they would be continued on stop-gap arrangement.

Para 7 : It is pertinent to note that out of 93 select candidates 49 belonging to the General category can be regularized. In the same manner 6 candidates belonging to the SC can be regularized and 15 belonging to SEBC category can be regularized. I say and submit that this exercise is undertaken by the respondent Corporation and in all 70 candidates can be regularized with immediate effect and majority of the petitioners have agreed to the formula of regularization put forward by the corporation. I say that 6 selected candidates have produced certificate issued by the competent authority to the effect that they belonged to SEBC category and these six candidates can also be regularized subject to verification of the certificates submitted by them. It is further pertinent to note that this decision taken by the Corporation was brought to the notice of the petitioner as well as similarly situated selectees and the Corporation, therefore, is ready and willing to regularize the services of the petitioners accordingly. I further say and submit that it is also decided that their services would be regularized from the date of their first appointment as Stop-gap arrangement as Sanitary Sub-Inspector and their services would be considered as continuous. I say and submit that it is also further decided that break in service shall be considered as leave and their pay shall be fixed by giving notional effect of the increment. It is also decided that, however, the petitioners would not be entitled to any arrears, if any and, their services will be considered continuous for the purpose of seniority, leave, gratuity and pension.

Para 8 : I say and submit that as the respondent

Corporation is bound by the resolutions of the State Government, as regards the recruitment on roster point remaining 23 selectees which would include 17 general class and 6 belonging to the SC category would be continued on stop-gap arrangement and they would be regularized as and when the posts fall vacant. I say and submit that this Hon'ble Court would be pleased to permit the respondent Corporation to regularize the services of the petitioners and selected candidates as per select list finalized on Dec 30, 2000. I say and submit that this affidavit is filed in the present S.C.A. only. However, as the facts are similar same may be treated as affidavit in other cogent matters also and the same is filed in order to bring the current development regarding the issues involved in the petition."

4.1 In this view of the matter, out of 93 selectees, 70 absorbed against the existing vacancies can be regularized.

4.2 Regarding the other 23 candidates (i.e. 17 belonging to the General Category and 6 to the SC category) 17 belonging to the General Category can be regularized, as and when vacancies arise against that Category and the 6 belonging to SC Category can be regularized against the existing vacancies of 6 SC posts.

4.3 It is made clear that the respondent Corporation will not relieve any of the petitioners from the service and their services will be considered as 'continuous' for all purposes.

4.4 The break in service of the petitioners will be considered as 'leave' and their pay will be fixed by giving notional effect of the increments, on condition that the petitioners will not claim any arrears for the period on leave.

5.1 In the result, the following directions are issued;

(i) The respondent Corporation will accommodate 70 selectees on or before 15/08/04.

(ii) All remaining petitioners will be regularized as and when vacancies will arise against their Category and till then they will be continued in service.

(iii) The services of the petitioners are ordered to be regularized with all benefits; and,

the service which has already been rendered, will be treated as 'continuous' for all purposes.

(iv) The respondent Corporation will review the vacancies for the posts of Sanitary Inspectors every year before 31st of December.

With these directions, all the petitions stand disposed of. Rule is made absolute to the aforesaid extent. No orders as to costs.

(K. S. Jhaveri, J.)

ORDER IN CIVIL APPLICATIONS

In view of the order passed in the main matters, the Civil Applications do not survive. They stand disposed of accordingly.

(K. S. Jhaveri, J.)

pravin/